IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9673 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S GAYATHRI D/O SUBRAMANIAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9673 of 2001

M/S THAKKAR ASSOC. for Petitioners No. 1-2

MR VIPUL PANCHOLI, APP for Respondent No. 1

MR DM THAKKAR for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 28/01/2002

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. APP Mr.

Pancholi for Respondent No.1 State. Ld. counsel Mr. D.M. Thakkar appears and waives service of Rule for Respondent No.2- original complainant. With the consent of parties, the matter is taken-up for final hearing today.

2. During the course of arguments, ld. counsel Mr. Tolia, ld. counsel appearing for M/s Thakkar Associates for the petitioners, has submitted that petitioner nos. 2 & 3 be permitted to withdraw this petition as they do not press this petition qua them at this stage. Permission is granted. Petition stands disposed of as not pressed qua petitioner nos. 2 & 3.

3. So far as petitioner No.1 is concerned, ld. counsel Mr. Tolia has submitted that on the relevant date, petitioner No.1 S.Gayathri was not on the Board of Directors and she had resigned as a Director on 30.9.1998. In support of his submission, he has produced Form No. 32 issued from the Office of Registrar of Companies, Coimbatore, Tamil Nadu. On careful consideration of this document, it is clear that when disputed cotton bales were purchased in the year 2000 & 2001, she was not a Director. It is rightly pointed out by ld. counsel Mr. Tolia by referring to para-5 of the complaint that it seems that complainant might not be knowing about resignation of petitioner no.1 otherwise complaint would not have been filed against her. Mr. D.M. Thakkar, ld. counsel appearing for respondent no.2 original complainant has also submitted that appropriate orders qua petitioner no.1 be passed as the complainant has never intended to file a complaint against a person who was not a Director or the person responsible when transactions took place. According to ld. counsel Mr. Tolia, even today, the petitioner No.1 is not a Director. Ld. APP Mr. Pancholi has also submitted that proceedings against petitioner No.1 can be terminated at this stage.

4. In view of the facts and circumstances of the case, petition is partly allowed. Proceedings of Criminal Case No. 672/2001 from the Court of Ld. Chief Judicial Magistrate, Botad filed on the strength of the complaint filed by respondent No.2 - original complainant, are hereby quashed and set aside qua petitioner No.1 S.Gayathri.

5. Rule is made absolute so far as petitioner No.1 is concerned. Rule is discharged so far as petitioner Nos. 2 & 3 are concerned. Petitioner Nos. 2 & 3 are directed to appear before the concerned Magistrate either in person or through their Advocate.

28.1.2002 [C.K. BUCH, J]
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